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A Primer in Public Policy for the Construction Industry

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PREFACE

The authors would like to thank the generous support of the CRC for Construction Innovation for sponsoring and supporting this research.

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EXECUTIVE SUMMARY

The purpose of this document is to introduce non-specialists to the discipline and practice of public policy, particularly in relation to the construction sector in Australia. In order to do this, a brief overview of Australia's government structure, and some of the main approaches to public policy analysis are outlined. Reference to construction related examples are provided to ensure issues discussed are relevant and understandable to construction professionals.

Government is a significant player in the construction industry, and has multiple roles: adjudicator, regulator, constructor, purchaser and client of construction projects. Moreover there are many spheres of government that are typically engaged in construction projects at multiple stages.

The machinery of government can be difficult to understand, even for long term public servants. Demystifying the processes within government can help to improve communication and therefore performance in the industry. A better understanding of how policy-making and government policies affect the construction industry will enhance communication and assist construction professionals and academics to understand and work with government. Additionally the document will provide an opportunity to demonstrate the relevance of policy analysis to inquiries of construction policies and regulation.

1. INTRODUCTION

The purpose of this report is to provide an introduction to public policy for those who are not familiar with this area of professional practice and research inquiry. The target audience is therefore construction professionals and researchers who do not have a background in government policy and, who wish to have a clearer idea of government policy formulation, development and implementation.

The construction industry is a large and significant sector of the Australian economy. The total production of the building and construction industry in Australia in 2001-2002 was \$59.7 billion, accounting for 5.5% of GDP and 7.5% of employment (Cole 2003). In Australia, there is a high level of government-initiated construction projects, approaching 30-40% of total industry turnover in the commercial building and engineering sectors. The public sector is thereby in a position to strongly influence the market due to its procurement policy for capital works and its role as regulator of the construction industry (Hampson and Brandon 2004). Adam Smith argued that apart from defending the citizens of a state and upholding justice, the key role of a state was “erecting and maintaining those public institutions and those public works which, though they may be in the highest degree advantageous to a great society, are, however, of such a nature that the profit could never repay the expense to any ... number of individuals.” (1971: 210 – 211). Consequently, construction is a crucial policy arena.

Historically, this role of designer, principal and project manager was undertaken in-house by public works departments, but in some jurisdictions, this function has been devolved to other government agencies some of which may have little or no experience in construction (APCC 2002). Overall, the influence government has upon industry has been at multiple levels (Gann and Salter 2000) and the different arenas of influence are outlined in the figure below.

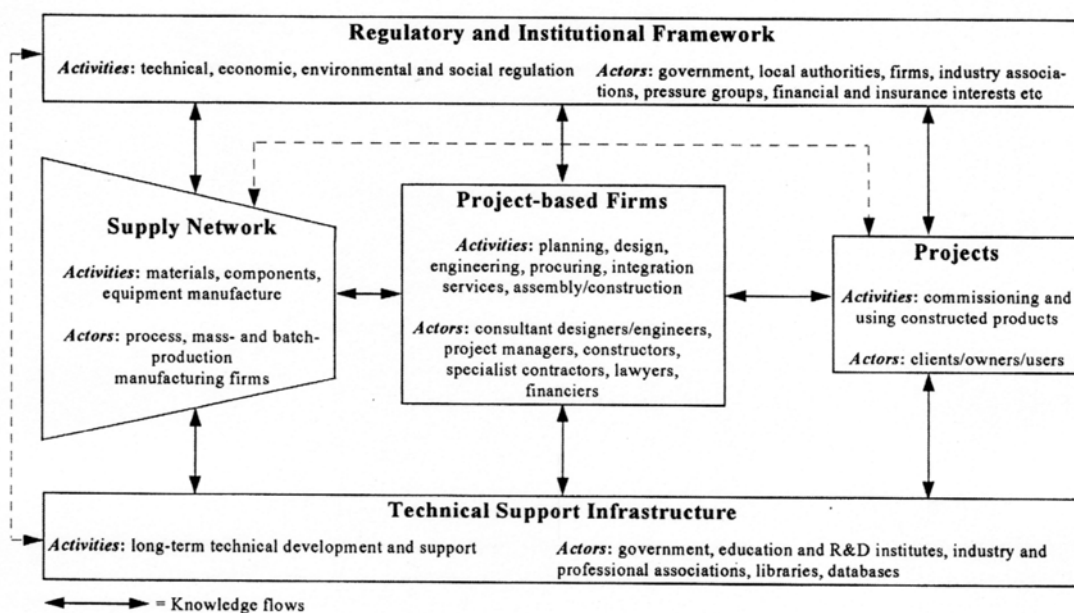


Figure 1 - Gann and Salter 2000: 960

As this diagram suggests, regulations affect all aspects of the construction industry – from materials, firms and construction projects themselves. Government regulation is

typically viewed as impacting negatively upon innovation and entrepreneurship in all sectors of industry. Consequently, “reducing red tape” and regulatory inconsistencies is perceived as a desirable outcome (OECD 1997). The **direct costs** normally associated with regulatory regimes are compliance costs and direct charges. However, in a fragmented system, such as Australia, **indirect costs** can also occur including procedural delays, either by government, or by industry having to adapt documentation for different spheres of government; lack of predictable outcomes, with variations occurring between spheres of government and sometimes within the same government agency; and lost business opportunities, with delays and red tape preventing realisation of business opportunities (OECD 1997). Research conducted internationally has shown that lack of coordination of policy, legislation and regulation between governments can lead to reduced innovation and productivity in industries (OECD 2001).

Recently released research reports into the construction industry in Australia have likewise argued that improved consistency in the regulatory environment could lead to improvements in innovation (Manley 2004, Price Waterhouse Coopers 2002), improved productivity (Productivity Commission 2004), and that research into this area should be given high priority (Hampson & Brandon 2004). Productivity gains from an improved regulatory system have been estimated in the hundreds of millions of dollars (ABCB 2003).

This report outlines the current Australian federal system of government, and discusses the policy making and approaches to policy cohesion currently in place. Five areas in which achieving increased coordination of legislation could have a positive impact on the Construction industry are suggested.

2. UNDERSTANDING AUSTRALIAN GOVERNMENTS

Under the Constitution the Australian states joined together to form one indissoluble Commonwealth – a **federation of states**. A federation is a form of government in which power is divided between national governments and smaller regional governments, often referred to as states. This is an arrangement which combines “strong constituent units of government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of its legislative, administrative and taxing powers, and each directly elected and accountable to its citizens” (Watts 2001: 24 – 26).

A federation should be distinguished from a confederation which is a union of independent states which retain their independence, and a unitary form of government, which has a strong central government, and regions established for administrative convenience. In federations the federal and regional governments are both independent and coordinated (Wheare 1963). It has been argued that “The jurisdictional contours of a federation rarely make political sense, conform to a rational or organisational logic, or are economically advantageous. They simply exist as an ongoing set of inherited but continually adapting practices and provision” (O’Faircheallaigh, Wanna & Weller 1999:98). In this sense federations are instrumental arrangements which are designed to help make fragmented or disparate government entities work, adapting, adjusting and consolidating to deliver mutual benefits for all participating governments (O’Faircheallaigh, Wanna & Weller 1999: 100).

Under a federal system, powers are divided between a central government and several regional governments. In Australia, power was divided between the Commonwealth Government and the governments of the six colonies, which were renamed 'states' by the Constitution. Specific areas of legislative power ("heads of power") were given to the Commonwealth Government, including:

- taxation
- defence
- foreign affairs
- postal and telecommunications services (Australian Government 2005)
- The Commonwealth also has power to make laws for Australia's territories.¹

The states retained legislative power over all other matters that occurred within their borders, including:

- police
- hospitals
- education
- public transport (Australian Government 2005).

Mutuality, reciprocity and exchange are concepts which reinforce the concept of federalism which Chapman (1989: 57) argues no crisis has yet been able to change. Nevertheless there has been considerable tension between the various spheres of government, as the wording of the Constitution has often created situations where both the Commonwealth and the States claim the authority to make laws over the same matter. (Australian Government, 2005).

A myriad of committees and working parties are needed to achieve cooperation between the levels of government, particularly in relation to policy. The main trend in cooperative federalism is increasing centralism and growing power of the Commonwealth at the expense of the states (O'Faircheallaigh et al, 1999). Part of the reason for this is the desire for national coherence in a range of policy areas. However, the High Court of Australia has also made a number of judgements which have increased the power of the Commonwealth at the expense of the states on a range of issues, which has been further enhanced by the increased revenue from the GST (Fenna 2004: 172). In particular the Roads Case of 1926, the High Court found that the Commonwealth could attach conditions to the granting of money, no matter how invasive these might be for the states (Fenna 2004). Further, the federated structure of government means that policy formulation and implementation is a complex set of interrelated actions between actors:

In federations multiple governments fragment policy processes and contribute a further set of complications or opportunities for public sector management. Policy must be negotiated between and across different levels of government, vertically between Commonwealth, state and local governments, and horizontally between states or local authorities. (O'Faircheallaigh, Wanna & Weller 1999:97).

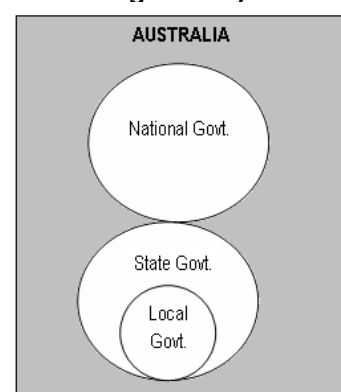
¹ A complete list of Commonwealth heads of power is at section 51 of the Constitution.

2.1 Intergovernmental Relationships

Policy analysts who examine intergovernmental relationships have tended to focus on hierarchical models of relationships between governments (Chapman 1989:61). This is not the only model, or way of seeing, federal government arrangements, however. A useful set of models have been advanced in the academic literature which are outlined below. The circle in each model indicates the area of responsibility of each sphere of government. All the figures are based on those initially developed by Wright (1978: 20).

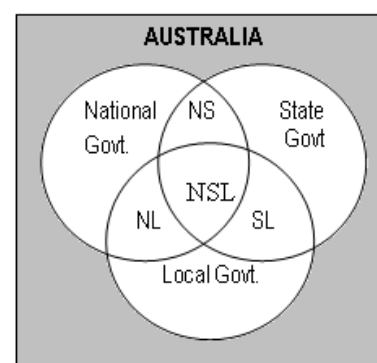
Model 1 can be described as a separated authority model, with sharp distinct boundaries between the national and state governments (Wright 1978). Under this model, both state and commonwealth govern within their sphere of authority. This may have been the intention of the framers of the Australian constitution, which sought to differentiate the roles and powers of state and federal governments. This model has been strongly undermined in recent years, as it can be challenged in areas where there is overlapping authority. Under this perspective, local governments are seen as “creatures of the state subject to creation and abolition at the unfettered discretion of the state (barring constitutional limitations) ... localities are mere tenants at the will of the legislature” Wright (1978: 21). In those areas where there are distinct and discrete spheres of authority, this model of viewing federal systems of governments may have value, although the perspective assumed in this model on the role of local governments is not one likely to be welcomed by local governments themselves.

Figure 2 - Model #1 - Separated Authority Model - (based on Wright 1978).



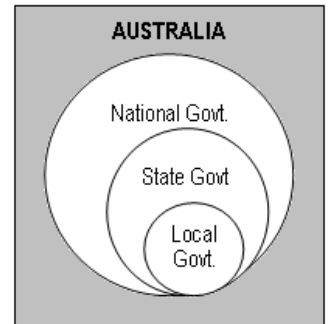
Model 2 is an overlapping authority model, where there is a balanced set of negotiated actions between the three spheres of government (Wright 1978). Each has autonomous spheres of action, however, most of the policy environment involves simultaneous action by multiple policy actors from multiple spheres of government all at the same time, and the power and influence of any one sphere is somewhat limited, due to the existence of the other spheres. This may be a more appropriate model of seeing federations as it acknowledges the “increasing interdependence of, and interaction between, policy making process in a political system characterised not only by a very high degree of horizontal (functional) differentiation and specialisation, but also by the institutional separation of vertical levels of federal, state and local governments” (Scharpf, 1978 cited in Chapman 1989:62). Under this view, local governments are seen as valid players with distinct and related roles to both state and national governments. In practice this view leads to a set of intergovernmental relationships that could best be described as bargaining, or negotiated between all three spheres of government.

Figure 3 - Model #2 - Overlapping authority model - (based on Wright 1978)



Model 3 is an inclusive authority model with diminishing circles of power and responsibility for each level of government (Wright 1978). If a government wanted to expand its area of influence, then either it can expand its own circle, or diminish the circle(s) of other government(s). Where a national government enacts legislation aimed at overriding state legislation, then the national government has effectively gained power, at the expense of the state governments, which have lost power. An alternative is to increase the size of the circle, without necessarily diminishing the size of the other spheres of government. This happens when the national government successfully raises more money and gives this to the states in the form of tied grants that place conditions on the states if they accept the grants. While these conditions could be seen as losses, the gains are often perceived to outweigh the losses and every sphere of government can achieve 'wins' over all.

Figure 4 - Model #3 - Inclusive Authority Model - (based on Wright 1978)



So which model best describes the situation in Australia at the moment? Federal systems of government can be viewed in a variety of ways. Parkin (2003) argues a situation close to the first model in that there are distinct areas of involvement for the different spheres of government, with state governments seen as essentially governments of **provision**, whereas the commonwealth government is primarily that of **decision making** and **finance**. Alternatively, the debates over Industrial Relations regulation and the situation of increasing reliance by the states on federal funding, leads some commentators to argue the current situation is closer to the third model, with the Commonwealth seeking to expand its influence at the expense of the states (Hamill 2005).

While arguments could be put for all of the models described above, we would argue that the overlapping model best describes the policy situation affecting construction in Australia. While the first and last model could be argued to exist for specific policy areas, the second model would appear to be the best at depicting the current policy in the Australian federal system at the moment particularly as construction is an area in which overlapping jurisdiction is apparent. This fragmentation has obvious issues for attempts to achieve consistency between jurisdictions particular where there is overlapping regulations.²

2.2 Cost of overlap in regulations

The design and construction market as a whole is valued at over \$40 billion per annum nationally (ACBR 2003). Over half of this building work is conducted across state borders. The lack of coordination between Commonwealth and State governments on construction regulations and policies is argued to negatively impact innovation (Manley 2004) and productivity (Productivity Commission 2004) in Australia. There is both quantitative and qualitative evidence that the Commonwealth is increasing the amount of regulation in all areas, with the Industry Commission reporting that the number of pages of legislation passed is doubling approximately every ten years (Fenna 2004: 99). Thus the lack of coordination between spheres of

² For a more detailed outline of the regulations affecting the construction industry in Australia, please see "Mapping the Regulatory Environment: An analysis of legislation affecting the construction industry in Australia.

government, and the consequent deleterious affects on productivity and innovation in the sector have been well documented. The lack of coherency between local governments on processes such as development assessment (Productivity Commission 2004) is also seen to negatively impact upon the productivity of the industry.

Manseau and Seaden (2001) argue that in countries with a strong centralised government structure, such as the United Kingdom and Finland, a single government department is able to champion innovation in industries such as construction. However, in countries with a federal system of government, like USA, Germany or Australia, there are a variety of agencies all dealing with aspects of a given industry, with resulting overlapping regulations (Manseau & Seaden 2001:17). In countries with centralised governments, government policy and actions are often seen as leading and promoting innovation. In contrast, in countries with federal government structures, innovation is assumed to occur due to opportunities created by competitive forces in the marketplace without the intervention of government, with the public sector often viewed as being conservative and as building barriers to innovation (Manseau & Seaden 2001:17). PriceWaterhouseCoopers (2002) argue in contrast that government can enhance innovation as a client, as a regulator, as an educator, and as a custodian of the business environment.

Geiger and Hoffman (1998) have noted that the extent of regulation in an industry tends to be negatively associated with firm performance. The cost of complying with variations in regulations between the states has been estimated by the Building Product Innovation Council (2003) as being up to \$600 million per annum for the building product manufacturers alone. Industry in Australia has consistently held that regulations inhibit innovation (Manley 2004). However, recent years have seen a strong deregulation of industry in general (Banks 2005). Further, government regulation has been perceived as enablers of innovation (PricewaterhouseCoopers 2002).

The research in this area raises questions therefore as to how Australian governments can develop policies that enhance innovation in the industry, with one of the key areas noted is the reduction in red tape and increasing consistency across the different spheres of government. There are various means of achieving consistency in federal systems of government that are examined in the next section.

2.3 Mechanisms for achieving coordination in federal systems of government

Harmonisation offers that the differences in laws and policies between two jurisdictions should be reduced by adopting similar laws and policies (Leebron 1997). Harmonisation can be in the form of specific regulations – both inputs and outputs; it can facilitate more general policy objectives focussing on guidelines (eg. Goals for pollution); there can be agreement on certain principles; and lastly, harmonisation of structures or procedures, usually to reinforce other types of harmonisation. Harmonisation is only possible if states can converge around one commonly agreed standard (Fox 1992).

Majone (1998) argues that within harmonisation, or coordination, there are a number of different levels. Optional harmonisation aims to guarantee the free movement of goods and services, while permitting states to retain their traditional forms of regulation. Minimum harmonisation is where all governments agree to a specific set

of minimum standards in regulations, but individual states are able to set higher standards individually (Majone 1998: 313). This case has also been referred to as the 'race to the bottom' in Europe as governments resort to the lowest common denominator in order to gain agreement of all parties (Leebron 1997).

The best known example in Australia of harmonisation is the Building Code of Australia which seeks to set a minimum standard of performance for buildings and building materials across Australia. This is not the only option, with the range of possible options outlined below. This range of options is useful to consider when contemplating how to achieve increased coordination in specific areas between governments.

Cooperative agreements are formal arrangements where two or more governments agree to work together. Such agreements include contracts, written undertakings, agreements on similar policies (Opeskin 2001). Informal arrangements typically take place within specific portfolios (eg. Public works) and range from conversations to intergovernmental committees (Opeskin 2001). There are a large range of intergovernmental committees which seek to develop solutions to share information. These arrangements have been referred to as either 'iron rods' due to the constrained and focussed nature of the interactions, or 'threads of gossamer' which emerge through intergovernmental relations managers with a wide focus and interaction (Chapman 1989: 55). This is similar to notions of policy networks, characterised by strong or weak ties between actors (Milward & Provan 1998).

Difficulties can arise from these intergovernmental committees however, as a state parliament is not legal bound by an intergovernmental agreement to enact legislation to implement a uniform scheme (Farina 2004). In practical terms, particularly if there is a financial grant being given by the Commonwealth, there is often strong incentive to pass the bill effectively endorsing the agreement.

There are a number of ways in which harmonisation can be achieved between various jurisdictions in a federated structure. The options listed below range from most coordinated to least coordinated.

Table 1- Mechanisms for Harmonising Regulations in Federal Systems of Government

<i>Option 1- Most coordinated</i>	<i>Unilateral Exercise of Power by the Commonwealth</i>	Creating uniformity in regulation in Australia by Commonwealth legislating in such a way as to over-ride all similar state and territory regulations. For such an approach to work, legitimate authority in the constitution, termed a 'head of power', needs to be determined. As the Commonwealth lacks head of power for OH&S this option is difficult to enact, although the Commonwealth can attach conditions to funding to the states.
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Option 2	<i>Reference of Power to the Commonwealth</i>	The states can elect to refer a state power to the Commonwealth under the Constitution (Farina 2004). If a 'matter' is referred to the Commonwealth by a state, the Commonwealth is then able to legislate (Allen Consulting Group 2002; Opeskin 2001). The Commonwealth government attempted this recently when it requested that the states refer workplace relations powers to the Commonwealth. This attempt failed when the "states advised that they will not refer their [industrial relations] powers" (COAG Communiqué 2005) to the Commonwealth. Cole (2003) suggested this was also unlikely to occur for OH&S regulation.
Option 3	<i>Incorporation by Reference</i>	The incorporation by reference application is where the various parliaments adopt the legislation of a single jurisdiction as amended from time to time in accordance with an intergovernmental agreement (Saunders 1994, 8). The advantage of this form of coordination is that there is need to only change a single piece of legislation, rather than several pieces of legislation although it requires extensive consultation (Allen Consulting Group 2002, Farina 2004, 41). The <i>Building Code of Australia</i> could be considered an example of this. This option was endorsed by Cole (2003) as the most viable for the construction industry.
Option 4	<i>Complementary or Mirror Legislation</i>	This option requires that the Commonwealth and states work together to achieve legislative coverage of a particular policy area (Allen Consulting Group 2002), particularly where there are dual, overlapping to uncertain division of constitutional powers (Farina 2004, 41). In these instances, each jurisdiction enacts laws to the extent of its constitutional capacity and the matter is addressed by the participation of all of the legislatures of the Federation (Opeskin 2001). "The Commonwealth and all participating states would pass separate, but totally consistent (although not necessarily identical) pieces of legislation" (Allen Consulting Group 2002, 40). An intergovernmental agreement is normally required to set out the terms and conditions of the arrangement.
Option 5 – moderately coordinated	<i>Mutual Recognition</i>	Under mutual recognition, the rules and regulations of other jurisdictions are recognised (Farina 2004). Mutual recognition enables goods or services to be traded across jurisdictions, and means that if the goods or services comply with the legislation in their own jurisdiction, then are deemed to comply with the requirements of the second jurisdiction, or pathways for achieving compliance are clearly established (Farina 2004). Mutual recognition is a one of the vehicles governments can utilise to reduce the regulatory impediments to goods and services mobility across jurisdictions (Productivity Commission 2003).
Option 6	<i>Agreed Legislation or Policies</i>	This mechanism is where governments in question agree to implement similar legislation or policies, which are then implemented by local legislation (Allen Consulting Group 2002).

Option 7	<i>Adoptive Recognition</i>	A jurisdiction recognises that the decisions of another jurisdiction meet the requirements of its own legislation regardless of whether this recognition is mutual (Farina 2004).
Option 8	<i>Non-Binding National Standards Model</i>	A national authority makes decisions which are adopted to various extents by the respective state or territory ministers (Farina 2004, 42).
Option 9	<i>Exchange of Information</i>	Such an exchange can take many forms, including where meetings between Ministers and/or public servants occur on a regular basis to exchange information; or where best practice guidelines or demonstration projects are published with the intention that they will be adopted by other jurisdictions (Allen Consulting Group 2002).
Option 10 – <i>uncoordinated</i>	<i>Independent Unilateralism</i>	Under this option each jurisdiction goes its own way – so there is no coordination at all between governments (Farina 2004, 42). Unlike option one, this option means that the states and the commonwealth all act in an uncoordinated way and pursue disparate policy objectives.

This section has focussed on various views of the relationships between federated systems of government, and the ways in which these governments can achieve some level of consistency or harmonisation of regulations.

3. UNDERSTANDING PUBLIC POLICY

Having examined the structure of governments, it is important to examine the actions and decisions of government, or making public policy. This aspect is an important and often overlooked area when examining government. The first step in examining public policy is to define the concept and a several related public policy terms.

3.1 Definition of public policy

There are a variety of definitions of public policy. Some definitions attempt to cover everything, such as: “policy is everything that governments choose, or choose not, to do” (Dye 1998), but may be unhelpful in making the process clear.

3.1.1 Definitions by government:

Public policy is an expression of what a government wants to achieve, and involves choosing, deciding, implementing and evaluating; it can be substantive – decided by parliament or cabinet, or procedural – decided at lower levels and concerning day to day action (Department of Premier and Cabinet 2000).

3.1.2 Definitions by academics

“Public policy is the disposition and deliberate action of government on any and every matter over which it exercises authority. This includes the stated and unstated; action and inaction; the choice of ends and the choice of means. Policies are often implemented by means of specific programs – which are formal arrangements for the delivery of government services” (Fenna 2004:5).

“While it might be going too far to say that public policy is the study of everything, it is certainly the study of everything that is involved in governing. This includes the political process, institutional structures, decision making processes, administration and implementation, the enormous range of substantive matters that governments must deal with, and the philosophical issues that arise in the process of deciding how to deal with those matters” (Fenna 2004: 32)

3.1.3 Our definitions

While all of these definitions have their place and pertinent value, it is important to distinguish between policy and legislation.

Public policy is a deliberate action that utilises governmental authority and institutions, and typically commits resources (money and services), in order to clarify public values and support preferred outcomes for government (adapted from Considine 1994:3-4). Policy is about encouraging behaviour – whether through legislation, cabinet approved policy, policy by guidelines to achieve consistent behaviour of those who follow it. Additionally, policy may include behaviour that does not involve the explicit commitment of resources, such as when Cabinet makes a decision which is binding on government employees, but is not formalised in legislation or regulations. An example of this is the change from delivering all building construction in house by government employees to contracting out a large proportion of construction activities to the private sector.

Having determined a policy decision, there are a variety of policy instruments that can be used to implement a policy:

- Policy through advocacy – educating or persuading, using information available to the government
- Policy through money – using spending and taxing powers to shape activity beyond government
- Policy through direct government action – delivering services through public agencies
- Policy through law – legislation, regulation and official authority

(Hood 1983: 168).

Legislation is the formal laws passed through parliament that are the result of policy. In this sense, legislation is the chosen instrument that governments enact to effect policy outcomes.

Regulation is a rule or directive made and maintained by an authority. Regulations are subordinate to legislation, but may clarify how legislation is to be carried out, and are also a reflection of policy. While regulation and legislation are just two of the possible policy instruments, these mechanisms are the most significant in terms of

their reach and impact in influencing the behaviour and activities of groups and individuals in the social system and polity (Considine, 1994; Fenna, 2004).

Programs are formal arrangements for the delivery of government services (Fenna 2004).

Having defined public policy, regulation and legislation, it is important to examine a number of theoretical models that may assist in understanding how policies are developed within government.

3.2 Policy analysis

Policy analysis is “an applied social science discipline which uses multiple methods of inquiry to produce and transform policy-relevant information that may be utilised in political settings to solve policy problems” (Dunn 1981:35). The policy process “may best be characterised as an ‘entanglement’”. It is argued that “the range of agencies and organisations, people and positions involved are enormous” (Chapman 1989: 54). In order to simplify this complexity, and to make the process understandable, the notion of a policy cycle is often referred to.

A policy cycle attempts to indicate that policy development is a process, not an event. “A cycle conveys movement of ideas and resources, the iteration of policy making, and a

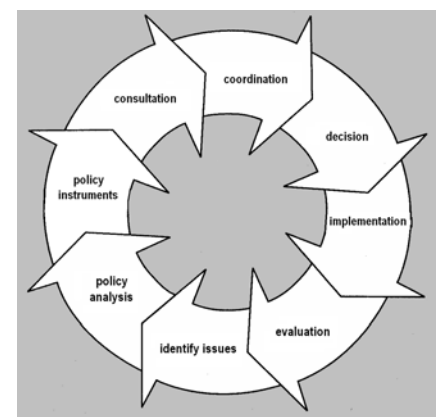
routine that does not finish with a decision but carries through to implementation and evaluation” (Bridgman & Davis 2004: 23). The cycle breaks the complexity of policy formation into smaller steps, and allows for description of the process. Such a model of policy development is not without its problems, as the policy cycle can imply a neatness, logic and simplicity that is absent from the complex, chaotic and discontinuous reality of policy making (Bridgman and Davis 1998). Howard argues that:

“the policy cycle should not be interpreted as a general formula that neatly and reliably explains the progress of policy processes. While the sequence of policy activities may be followed in certain situations, there are also cases where a strict interpretation of the model produces a misleading picture of the policy process. The formal model is least likely to apply where there is insufficient time to devote to proper analysis, where governments are already committed to a course of action and in cases where decision makers are unwilling to reveal their real objectives” (2005:12).

We would concur with Hill and Hupe (2003) who argue that while the policy cycle does not reflect reality, it nevertheless provides a powerful analytical tool for structuring the analysis of policy processes.

Bridgman and Davis (2004) have provided the seminal work on policy cycles for Australian public service. Consequently, the following sections (3.2.1 to 3.2.7) draw heavily on their text, and set out an extended précis of their work.

Figure 5 - The Australian Policy Cycle (Bridgman & Davis 2004: 26)



3.2.1 Identifying Policy Issues

Issues are contested in political life with a variety of groups pressing for the adoption of particular viewpoint (Ryan, Parker, Brown, 2003). The 'policy agenda' is the result of the narrowing of a countless number of possible problems to a select few that capture government interest and intent. With limited time and resources, policy makers can only pay attention to just so many issues.

There are a variety of drivers for issues in policy development. Within government, these include party political platforms, key government achievements of the past, ministerial and governmental changes, the monitoring activities of policy specialists, 'sunset' dates to legislation, or unfavourable audit reports. External drivers for policy include economic forces, media attention, opinion polls, international relations, technological development, and demographic shifts (Bridgman & Davis 2004).

For an issue to make the policy agenda and be taken up by government, there needs to be agreement on the problem as being significant; there should be prospect of a solution; the issue should be one that the government of the day considers of sufficient import to invest time and capital; and finally the ideological framework of the government may influence whether the issue is addressed at all (Bridgman and Davis 2004: 41).

3.2.2 Policy Analysis

Bridgman and Davis (2004) argue that there are a series of fundamental steps to analysing existing policies:

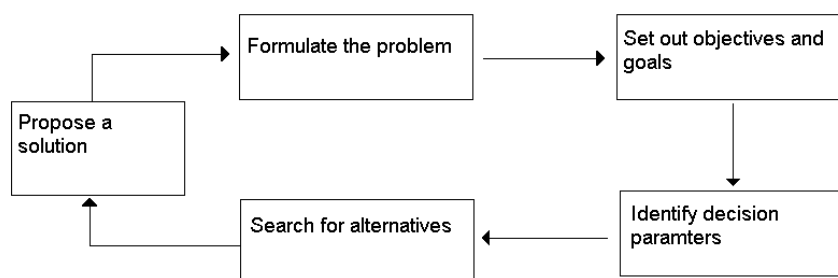


Figure 6: Policy analysis (Bridgman & Davis 2004: 50)

When examining public policy it is possible to focus on the process by which policy is developed, the substance of the policy, or the implementation of the policy (Fenna 2004). Having formulated a problem, the defining of goals is essential to policy decision process. Often there are competing goals in government and these should be balanced when determining a policy outcome. There are likely to be a variety of parameters on the decision process, of which time and money are key aspects. However some issues defy easy categorisation, identification of causes or inability to cost the courses of action available – and form what have been termed 'wicked issues' (Bridgman & Davis 2004). The search for alternatives involves research, from existing policies at a local and international level, reviews and reports on the issue, academic journals, discussions with experts within and outside of government and consultation with clients. The purpose of the search is to identify options, from which potential solutions for the issue can be identified. When making recommendations on various policy options, the economic, social, environmental, legal and political contexts need to be considered.

Impact of a given policy option can be undertaken in economic terms through cost-benefit analysis, cost-effective analysis or opportunity cost analysis. Typically, the policy will often be reviewed in terms of National Competition Policy, competitive neutrality, regulatory impact, reduced outlays, and competitive service delivery (Bridgman and Davis 2004). Analysis from a social framework often use principles of social justice as part of the analysis process, including: rights and obligations, equity, participation and access; environmental analysis typically considers issues such as biodiversity, ecological sustainability, habitat preservation, environmental quality and natural resource management; analysis from a legal perspective considers questions of the relation to the constitution, accountability arrangements, human rights and liberties, and the legal and administrative efficacy of the proposal (Bridgman and Davis 2004).

Policy researchers will be implementing a normative approach to policy analysis, as we will be advocating a specific course of action in relation to specific areas of policy (Dunn 1981: 37).

While there are a number of aspects to the policy analysis process, this project will focus on the relationships between policy problems, policy alternatives and recommending policy actions, as suggested by Dunn (1981: 48). Monitoring of policy outcomes and performance would be beyond the scope of the project.

3.2.3 Policy instruments

Having determined a policy decision, there are a variety of policy instruments that can be used to implement a policy. These include:

- *Advocacy* – where information available to government is used for educating or persuading
- *Money* – where government attempts to guide activity beyond government through its spending and taxing powers
- *Direct action* – where government delivers services through agencies
- *Law* – where government enacts legislation, regulation and other instruments of official authority

(Hood 1983: 168).

The choice of policy instrument is important as it links objectives and their attainment. Key questions here revolve around the appropriateness, efficiency, effectiveness, equity and workability of the instrument to achieve the policy outcome (Bridgman and Davis 2004).

3.2.4 Consultation

Consultation is used by governments in order to support democratic values, building consensus and political support, improving regulatory quality through information collection, reducing regulatory costs on enterprises, citizens and administrations, quickening responsiveness, and carrying out strategic agendas (OECD 1994: 6-9). A range of consultation processes are possible, from information through to complete cooperation.



Figure 7: Consultation Continuum (Shand & Arnberg 1996: 21)

The Office of the Cabinet (1993: 30) (cited in Department of Premier and Cabinet 2000) identified a number of key elements of an effective consultation process:

- Consultation is an essential component of the policy making process;
- Effective consultation should occur early and throughout the policy process;
- Each consultation needs to be designed to meet the unique demands of the situation and identify and define clearly the issues considered, and allow adequate time to conduct the consultation;
- Effective consultation requires openness about why people are consulted, how they will be consulted, and how much influence stakeholders will have in the policy decision;
- Those consulted need to be provided with comprehensive, balanced and accurate information;
- All interested parties should have access to the consultation process; and
- All participants should be treated with dignity and respect.

Information involves the use of surveys and public information campaigns. **Consultation** involves interest group meetings, circulations of proposals, and public hearings. **Partnership** involves advisory committees, and peak agencies. **Delegation** involves an external body, typically a commission or inquiry. Transfer of control, or delegation, is rare for a policy decision, but occurs in the example of referendums for example. This links up with stakeholder theory as who is consulted can make a difference to the outcome.

3.2.5 Coordination & Decision

Coordination is necessary in government to ensure there is an internal congruity of policies and decisions through the various agencies of government. Modern governments are, in reality, networks of loosely linked organisations, rather than a single hierarchy amenable to command and control (Painter 1987:9 cited in Bridgman & Davis 2004: 94). This means that there may be potential conflict over policy goals, and the costs and benefits of a consistent framework need to be argued coherently.

Ideally a government will have a well developed and widely distributed policy framework, setting out economic, social and environmental objectives. In reality, the articulation of such overall policy documents is rarely documented and may be scattered amongst budgets, electoral promises, white papers and recent legislation. Overall policy objectives must often be inferred and tested through consultation and coordination (Bridgman & Davis 2004: 95). Central policy units in government attempt to bring a 'whole of government' perspective to much policy development. At a commonwealth level, this is often done by the Department of Prime Minister and Cabinet, at a state level with the Department of Premier and Cabinet or the Chief Minister, and at a local level around the Office of the Mayor. Typically Treasury and the Department of the Attorney-General also have significant roles to play.

The situation becomes much more complex when applied to intergovernmental arrangements. The major reasons for this are that each state of Australia has a history and identity of its own, with its own legislature and governments. Difficulties can arise where an issue requires cooperation between the states and commonwealth, where the central Commonwealth government has limited or no

constitutional power (Farina 2004: 9). In federal style governments, there can be a trap in which regional and local spheres of government can subvert national consistency by effectively exercising a policy veto, resulting in sub-optimal outcomes for all players (Scharpf 1988). This has also been referred to as the 'race to the bottom' in Europe as governments resort to the lowest common denominator in order to gain agreement of all parties (Leebron 1997).

3.2.6 Implementation

Implementation can sometimes fail because the agencies lack expertise or commitment, implementation mechanisms are too rigid, people do not respond as the government expects, the cost of realising the policy objective becomes prohibitive, the program assumes cooperation between government departments that does not occur or powers that are beyond the governments control, there are too few incentives to encourage compliance, or those implementing the program do not understand what is required (Patton & Sawick 1993: 365). Bridgeman and Davis (2004) suggest that incomplete specification, inappropriate agency, conflicting objectives and directives, failure of incentives, limited competency, inadequate resources, and communication failures summarise the way in which implementation can fail.

3.2.7 Evaluation

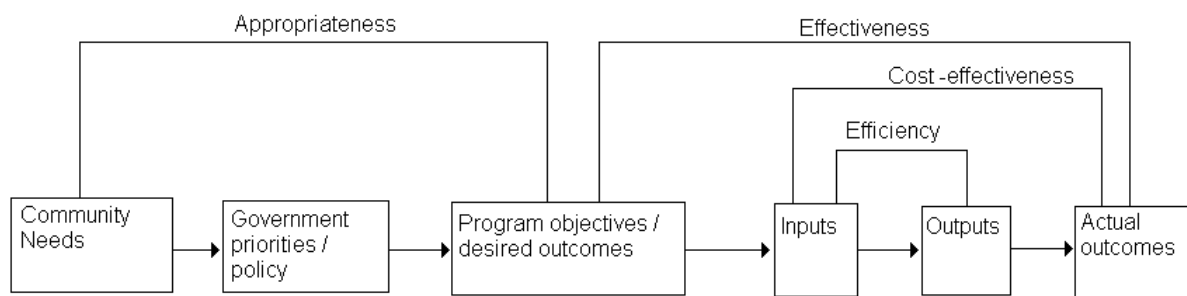


Figure 8: Policy Evaluation (Department of Finance 1994:8)

The policy cycle begins and ends with evaluation (Bridgeman and Davis 2004: 130)

- The resources and materials used to deliver policy are called *inputs*
- The products that emerge, or are produce, from the organisation are called *outputs*
- *Outcomes* are the results of policy for the clients and others (Kettner & Martin 1987).

An example, is the local government employees who carry out inspections of buildings. The inputs are the time and effort of government employees, and the policy framework which frames this inspection regime. Outputs are the number of houses inspected. The outcomes are a high quality of construction activity.

Efficiency can be achieved by reducing the number of inputs for the same number of outputs. Effectiveness can be increased by ensuring outcomes achieve the stated objectives. Appropriateness is increased if the objectives are consistent with government priorities and these priorities are consistent with community needs (Crossfield & Burn 1994: 4).

Appropriateness, effectiveness, cost-effectiveness and efficiency are all capable of being the focus of a policy evaluation process (Department of Finance 1994).

3.3 Public policy and innovation in the construction industry

Innovation in the construction industry can take many forms. Innovation can be classified “according to whether it is ‘incremental’ (small, and based on existing experience and knowledge), ‘radical’ (a breakthrough in science or technology), ‘modular’ (a change in concept within a component only), ‘architectural’ (a change in links to other components or systems), or ‘system’ (multiple, integrated innovations)” (Slaughter 1988, cited in Blayse and Manley 2004, p.144).

The OECD found that innovation can either be ‘technical’ or ‘organisational’. Technical innovation involves either ‘product’ or ‘process’ innovation, whereas organisational innovation can include elements such as establishment of changed organisational structure, introduction of advanced management techniques, and implementation of new corporate strategic orientations (Blayse and Manley 2004, p. 144).

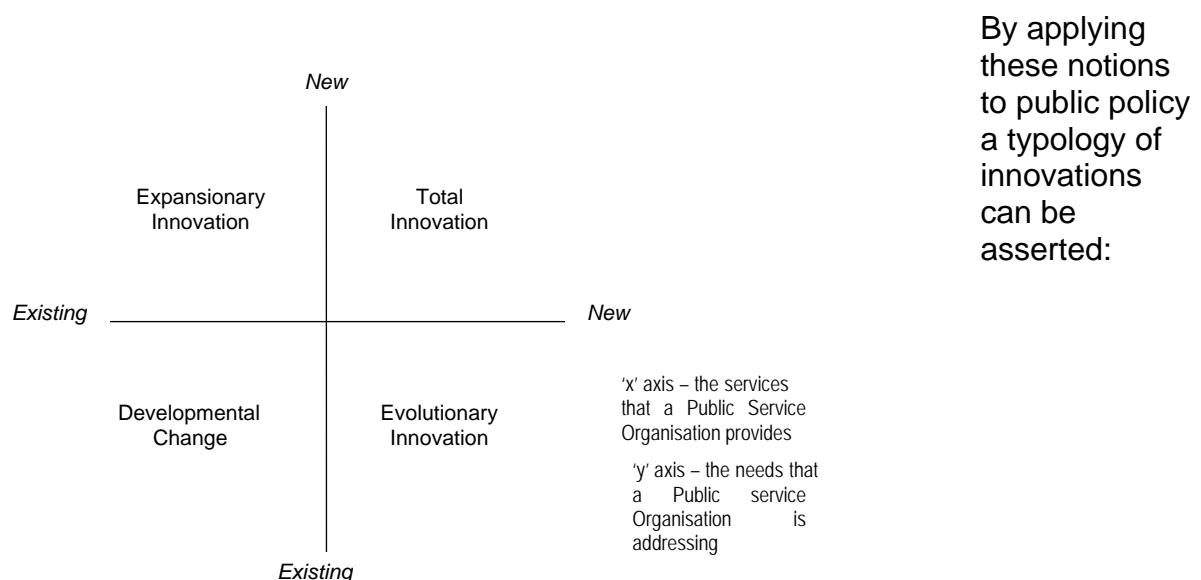


Figure 9 (Osborne & Brown 2005: 151)

In the public sphere, successful innovations are perceived to have a number of key attributes:

- Relative advantage over what preceded it;
- Compatibility with existing technologies / skills;
- Ease of comprehension by end users;
- Trialability; and,
- The observability of its results and achievements (Osborne & Brown 2005:127).

As this project is attempting innovation in a number of policy areas, the recommendations of Osborne and Brown (2005) appear pertinent. Any policy innovations we propose need to improve on the current situation; be compatible with

existing technologies; be easily understood by users; be capable of being trialled; and have results that can be measured in some way.

3.4 Specific areas of policy that could be enhanced through increased harmonisation

The CRC CI, through the Construction Industry Business Environment project will undertake research on the appropriate mechanisms to achieve increased harmonisation in a number of key areas:

- Occupational Health and Safety
 - Sustainable built environment
 - Training and capability
 - eBusiness (eGovernment)
 - Procurement (PPP, privatisation, contracting out)
 - Builders Licensing
- CONCLUSION

This report has provided an overview of public policy as it affects the construction industry in Australia. Initially the federal system of government was outlined and the mechanisms by which coordination of regulation could occur were examined. This discussion then led to a broader discussion of policy development, in particular the policy cycle advocated by Bridgeman and Davis (2004).

The coordination of policy in federal systems of government is a difficult task. The complexity of intergovernmental relationships in federal systems of government leads to competition. This competition is not just between different spheres of government for resources in order to effectively govern, but also between different perspectives on how governments do, or should, relate to each other. Even once a way of relating can be agreed upon, there are significant challenges in order to achieve coordination in the first place, not least of which is to identify the most appropriate method of achieving coordination. These tools range from unilateral exercise of power by the commonwealth to a 'free for all' system in which each jurisdiction legislates as it sees fit.

There is a strongly held belief in industry that that government regulation inhibits innovation (Manley 2004). However, other researchers have shown that it is possible for government regulation to foster innovation (Borins 2001; Gann, Wang & Hawkins 1998; Rothwell & Zegveld 1981, Taylor, Rubin & Hounshell 2005). Further research is needed on the relationship between government regulation and innovation in Australia, particularly the situations and circumstances under which regulation can act as an enabler of innovation, and those circumstances in which it acts as an inhibitor. Further research is also needed on the specific nature of the ways in which harmonisation or co-ordinative effort can be used most effectively for achieving regulatory and policy coherence of the construction industry in Australia.

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5. GLOSSARY

Public policy is a deliberate action that utilises governmental authority and institutions, and commits resources (money and services), in order to clarify public values and support preferred outcomes for government (after Considine 1994:3-4).

Legislation is the formal laws passed through parliament that are the result of policy. In this sense, legislation is the chosen instrument to enact policy for government.

Regulation is a rule or directive made and maintained by an authority. Regulations are subordinate to legislation, but may clarify how legislation is to be carried out.

A client in this context therefore, is one of the multiple stakeholders that can affect, or be affected by, public polic